



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D. C. 20226

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DEPLETION ALLOWANCES

Proprietors of Distilled Spirits Plants, Breweries, Bonded Wineries, Importers, Wholesalers and others Concerned:

Purpose. The purpose of this industry circular is to advise industry members of the forthcoming ATF Ruling relating to depletion allowances. The ruling reads as follows:.

The Bureau of Alcohol, Tobacco and Firearms has been asked whether a depletion allowance given to a retailer by an industry member is considered a "thing of value" within the meaning of section 5(b)(3) of the Federal Alcohol Administration Act (the Act), 27 U.S.C. § 205(b)(3).

Depletion allowances are discounts given to retailers based on the quantity of product sold by such retailers to their customers. No discount is given at the time the product is purchased by the retailer.

In general, section 5(b)(3) of the Act prohibits an industry member from inducing any retailer to purchase alcoholic beverages to the exclusion of products sold or offered for sale by other persons in interstate commerce by furnishing, giving, renting, lending or selling to the retailer any fixtures, signs, supplies, money, services, or other thing of value.

Revenue Ruling 54-161, C.B. 1954-1,338 (Internal Revenue) held that price reductions, rebates, refunds, and discounts given to retailers at the time of entering into an agreement of sale are merely methods used to arrive at an agreed sales price and as such do not fall within the purview of the Act. However, if the price reduction, rebate, refund, or discount is in fact merely a subterfuge to otherwise violate the Act, then the transaction would constitute a prohibited "gift" within the meaning of section 205(b)(3).

The Bureau believes that an agreement to pay a depletion allowance at some future date based on the retailer's sales to consumers does not constitute a pricing transaction since it does not reduce the price of the goods at the time they are sold to the retailer. Although the terms of the depletion allowance are agreed to at the time of sale, the retailer is not unconditionally entitled to any reduction in price as a result of the sale. In a normal discount or price reduction situation, the right to such discount accrues at the time of the sale to such retailer.

The depletion allowance is merely a promise by the industry member to pay the retailer if and when the retailer resells the goods. Therefore, if the goods remain unsold, the retailer receives no discount and must pay the full cost of the goods.

Held: Depletion allowances given by industry members to retailers, whether directly or indirectly, are not considered legitimate pricing arrangements. Such payments would amount to a means to induce purchases to the exclusion of products sold by competitors, and if coupled with the other elements of the statute, a violation of section 5(b)(3) would result.

Revenue Ruling 54-161 is hereby amplified.


Director

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